



## The City of San Diego

### Staff Report

DATE ISSUED: January 11, 2021

TO: City Council

FROM: Development Services Department

SUBJECT: Appeal of the Planning Commission Decision to Approve the Del Mar Heights Elementary School Rebuild Project No. 666025

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Council District(s): 1

#### OVERVIEW:

This action item is an appeal of the Planning Commission decision to approve a Coastal Development Permit, Conditional Use Permit, Site Development Permit, and a Planned Development Permit for the Del Mar Heights Rebuild (Project) for the reconstruction of an existing elementary school located at 13555 Boquita Drive within the Torrey Pines Community Plan area. The scope of the subject hearing only includes the appeal of the Project, but not the environmental document, Final Focused Environmental Impact Report, with the inclusion of the Mitigated Negative Declaration (SCH No. 2020029070) for the Del Mar Heights School Rebuild Project, prepared by the Del Mar Unified School District (District) as Lead Agency.

San Diego Municipal Code (SDMC) Section [112.0520\(a\)](#) states that an appeal can be made of an environmental determination, which is defined in SDMC Section [113.0103](#) as "a decision by any non-elected City decision maker, to certify an environmental impact report, adopt a negative declaration or mitigated negative declaration, or to determine that a project is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines 15061(b)." The determination made for this Project does not qualify as an environmental determination subject to appeal under the SDMC or CEQA.

#### PROPOSED ACTIONS:

A resolution to affirm, reverse or modify the Planning Commission's approval of Coastal Development Permit No. 2440630, Conditional Use Permit No. 2483264, Site Development Permit No. 2483265, and Planned Development Permit No. 2570884.

## DISCUSSION OF ITEM:

### Project Description:

The [Report to the Planning Commission No. 21-046](#) includes all of the specific background and analysis of the Project, and necessary findings by which City staff recommended approval of all required entitlements for the Project, and determined that: (1) there is substantial evidence that none of the conditions requiring preparation of a subsequent or supplemental EIR or subsequent Negative Declaration/Mitigated Negative Declaration exist, and (2) the City will rely on the previous environmental document, prepared by the Del Mar Union School District (District) as Lead Agency, which adequately addresses this Project.

### Planning Commission Hearing: October 21, 2021

Public comment was received in favor and in opposition of the Project. Members of the community who support the Project are satisfied the new school is the best site design for the students in the District and want reconstruction to begin without further delays. Those in opposition to the Project are not satisfied with the design process and claim the Project is not what the community voted for with the passing of bond Measure MM to provide funds for construction, reconstruction, and modernization of District school facilities.

After public testimony was closed, the Planning Commission addressed public comment and were able to support the findings to approve the Project. A motion to approve was made by Commissioner Austin and a second by Commissioner Boomhower. The Planning Commission voted unanimously 5-0-0 to support the motion with 2 commissioners absent.

### Appeal:

On November 4, 2021, Save the Field submitted an appeal application to the City Clerk's Office appealing the Planning Commission's approval of the Project. The grounds for appeal were cited as Findings not Supported and Conflict with Other Matters.

The following is a summary of the appeal issues from Sections IV and V of the Exhibit A Description of Grounds for Appeal followed by City staff's responses:

## **Appeal Issue No.1 (Section IV): The Findings Required by the SDMC for Approval of the Requested Permits Cannot be Made**

### **a. Coastal Development Permit**

- i. Project does not enhance or protect public views (Finding #1)  
*The Community Plan identifies that "[s]ignificant scenic resource areas" include the Torrey Pines State Reserve Extension," and that future development adjacent to the Torrey Pines State Reserve Extension shall provide adequate buffer areas and setbacks to avoid significant visual impacts. (ibid.) However, there is not evidence in the record that the Project enhances and protects public views. The Project will greatly expand the footprint of the existing campus across the entirety of the Site, which will result in the construction of new buildings closer to the edge of the Reserve, diminishing public views to the ocean and to the Reserve from the surrounding areas.*
- ii. Project will have adverse impacts on adjacent environmentally sensitive lands (Finding #2)  
*The Community Plan identifies that "[s]ignificant scenic resource areas" include the Torrey Pines State Reserve Extension," and that future development adjacent to the Torrey Pines State Reserve Extension shall provide adequate buffer areas and setbacks to avoid significant visual impacts. (ibid.) There is no substantial evidence in the record that the Project provides an adequate buffer to preserve the scenic and visual qualities of*

*the Reserve. The Project will greatly expand the footprint of the existing campus across the entirety of the property, which will result in the construction of new buildings closer to the edge of the Reserve.*

- iii. **Project is not in conformity with certified Local Coastal Program (LCP) (Finding #3)**  
*In addition, the Project is not in conformity with many other provisions in the Community Plan and is thus not in conformity with the City's Certified Local Coastal Plan ("LCP"). Critically, the District's Focused EIR omitted analysis of the Project's consistency with the City of San Diego General Plan or the Torrey Pines Community Plan. The District's post-hoc analysis of the Project's conformity with the Torrey Pines Community Plan, which was first analyzed in response to comments on the District's inadequate MND, noticeably omits many of the obvious inconsistencies with the plan. The District only purports to analyze the Project's consistency with the "key policies" and fails to address how the Project is consistent with parks and recreation and development near the Reserve.*

**b. Conditional Use Permit and Planned Development Permit**

- i. **Proposed development not adversely affect applicable land use plan**  
*The Project does not comply with this requirement and instead requests alternative compliance for the brush management zones. Project fails to consider impacts to wildfire evacuation, which can have significant adverse impacts on first responders' ability to respond to any wildfire at or near the Reserve.*
- ii. **Proposed Project will be detrimental to public health, safety and welfare**
  - 1. **Risk of Public Health and Safety Impact for Alternative Compliance for Brush Management:** *The Torrey Pines Community Plan also provides guidance with regard to Brush Management stating that, "Because of the abundance of natural open space areas including canyons rich with native vegetation, special brush management consideration and enforcement should be provided within the Torrey Pines planning area". The Project does not comply with this requirement and instead requests alternative compliance for the brush management zones.*
  - 2. **Limited Fire Setbacks and Lack of Evacuation Analysis Impact on Public Health and Safety**

- c. **Site Development Permit - Site is not physically suitable for the design and siting of the Project.** *This Project has neglected to evaluate Project impacts to the environmentally sensitive lands and has requested deviations to comply with critical brush management regulations; findings cannot be made that the project will not be detrimental to the public health, safety and welfare because the project proposes limited fire setbacks and does not provide an evacuation analysis to evaluate the impact of the project on public health and safety.*

**City Staff Response:** City staff reviewed the appellant's issue and supporting documents and found the appeal issues are not valid.

**CDP Finding #1: The proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan:** The Project's bulk and scale will be low-scale, single story, low slope roofs, and less than 30 feet in height, which is similar in height to buildings and homes in the existing area. The proposed buildings will be designed to include sloped and curved roof lines and set further back from the edge of the canyon than the existing buildings. There is no designated public view at this location per the community plan, however, public views from the right-of-way will be protected by adherence to the RS-1-3 zone requirements for setback requirements to avoid visual impacts.

**CDP Finding #2: The proposed coastal development will not adversely affect environmentally sensitive lands:** The proposed Project is limited by a draft permit condition prohibiting development in the remaining undeveloped portions of the site that contain environmentally sensitive lands beyond what

is required for repairing the drainage outfalls. The repairs of one of the stormwater outfalls, located along the southern Project boundary, will encroach slightly into sensitive southern maritime chaparral. This impact will be temporary, less than 0.01 acre in size, and will be revegetated with a mix of native species appropriate for the surrounding area.

**CDP Finding #3: The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified**

**Implementation Program:** The General Plan encourages joint use school sites for recreational purposes, and the Community Facilities Element of the community plan recommends that a joint use agreement with the Del Mar Heights (and Del Mar Hills) Elementary Schools should be investigated. The City has previously investigated developing a joint use agreement with the District for this school. At that time, the District did not want to pursue a joint use agreement. While a joint use agreement is not currently in place, the proposed site design could allow for future joint use as the design includes community accessible recreation space.

**SDP - Supplemental Finding #1: The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands:** The Project provides the required buffer area and moves buildings further from the edge of the western slope that separates the site from the Torrey Pines Reserve Extension. The slopes on the west and south sides (buffer area between the existing school site and the Torrey Pines Reserve Extension) are maintained by the District, in compliance with [San Diego Fire-Rescue Department's City-wide Brush Management and Weed Abatement requirements](#), and would not change with the proposed Project.

**PDP Finding #3: The proposed development will not be detrimental to the public health, safety, and welfare:** When the 100 feet of defensible space required for [Brush Management](#) in the VHSFZ cannot be met, Alternative Compliance is required for the structure(s). The Project proposes an expanded, fully irrigated Brush Management Zone One condition measuring 43 feet along the southern property line, implementing alternative compliance measures in accordance with Fire Prevention Bureau Policy B-08-1, with no Brush Management Zone Two, creating a safer fire break between the native vegetation of the Torrey Pines Reserve Extension and the buildings on site. The elimination of a Zone Two at the southern end of the campus allows for a fully irrigated Zone One, combined with the fire rated buildings and windows in areas that are close to the canyon edge. The current site includes portable buildings that are 25-30 years old, are not fire rated, and have no running water. The new buildings will be constructed under the current California Green Building Standards Code as required by the Division of the State Architect (DSA) and will include fire rated buildings, fire sprinkler systems, three additional fire hydrants, and fire access throughout the site for emergency vehicles. These improvements will make it easier to fight a fire on campus and make it easier to evacuate if necessary. Because there have been no changes to the access points to the campus, the evacuation routes will remain the same.

**Appeal Issue No. 2 (Section V): The District Failed to Obtain a Recommendation from The Torrey Pines Community Planning Group Under False Pretenses**

*The Project is not in conformity with the Community Plan and the Certified Local Coastal program. The District's post-hoc analysis of the Project's conformity with the Torrey Pines Community Plan, which was first analyzed in response to comments on the District's inadequate MND, noticeably omits many of the obvious inconsistencies with the plan. The District only purports to analyze the Project's consistency with the "key policies" and fails to address how the Project is consistent with parks and recreation and development near the Reserve.*

- **[Council Policy 600-24:](#)** *The District's conduct with respect to this Project ignores Council Policy 600-24 and appears to have been intentionally misleading to the City. The full Planning Board still has never had the chance to hear, debate, or render an official recommendation on the Project. This is a critical piece of the public process which the District deliberately and improperly overstepped.*

- **Torrey Pines Community Plan (TPCP)**: *The District fails to recognize the Project's inconsistency with the Community Plan goal to "provide adequate park and recreation facilities" by securing joint use agreements with the elementary schools. The Project's significant reduction in outdoor recreation space is in direct opposition to this goal. the Project will diminish the availability of usable park area even further by reducing the existing grassy field available to the public by at least 41,643 square feet (.96 acres).*
- **North City Local Coastal Program (LCP)**: *There is no substantial evidence in the record that the Project provides an adequate buffer to preserve the scenic and visual qualities of the Reserve. The Project will greatly expand the footprint of the existing campus across the entirety of the property, which will result in the construction of new buildings closer to the edge of the Reserve.*

**City Staff Response:** City staff reviewed the appellant's issue and supporting documents and found the appeal issue not valid.

Council Policy 600-24: Community planning groups are advisory bodies that provide citizens with an opportunity for involvement in advising the City on land use matters. Council Policy 600-24 provides the opportunity for community planning groups to provide the City with a recommendation, however, the development project review process established in the Land Development Code does not require the community planning groups provide a recommendation. As discussed at the Planning Commission, in the Planning Commission Staff Report and summarized below, the District did not avoid having the Project heard by the Torrey Pines Community Planning Board. The District presented to the planning board on two occasions, and decided to not place the Project on a meeting agenda for a recommendation. The planning board has been updated on the Project through the continued project review process.

The applicant presented the Project to the Torrey Pines Community Planning Board at multiple meetings. The Project was first presented at the Planning Board's [June 11, 2020](#) regular meeting as an information item. The Board's bylaws state development project applications distributed to the Planning Board are reviewed by the Project Review Subcommittee prior to any final Planning Board recommendation and the Project was discussed at the Subcommittee's special meeting August 11, 2020. There was considerable discussion with questions and comments from community members. Subcommittee members provided substantive comments regarding the Project, but there was no formal recommendation. At their regular meeting in [August](#), the Board discussed the possibility of scheduling a special meeting for a project recommendation. Due to concerns about ongoing Project litigation, the Planning Board identified a need for information from the City Attorney before further discussion of the Project at a meeting; however, nothing precluded the Planning Board from hearing the Project and providing a recommendation.

**TPCP Goal:** A joint use agreement is not required as the site is not surplus and the TPCP recommendation was intended for the City to identify specific sites to use as neighborhood parks. Therefore, a joint use agreement has not been pursued with the City's Park & Recreation Department. Should the Park & Recreation Department desire to discuss entering into a joint use agreement that was determined to be mutually beneficial by the District and the Park & Recreation Department, the District would be willing to engage in such discussions.

**LCP Buffer:** The LCP addresses the need to establish buffer areas to protect natural and wildlife areas from development. In conformance with the LCP goal to provide buffering of the Torrey Pines Reserve Extension (Reserve), no lighting is proposed adjacent to the Reserve and the landscape buffer along the eastern portion of the site would be preserved and improved to shield views of the school roof. The proposed design will be low-scale and less than 30 feet in height which is similar height to buildings and homes in the existing area. The proposed buildings would be set further back from the edge of the canyon than the existing buildings to avoid significant erosion, visual or sediment impacts from construction. Setbacks also shall be required to prevent fire breaks from being constructed on reserve property or into off-site sensitive areas. The proposed Project will remain almost entirely within the fenced limits of the existing school. The only scope of work proposed outside the existing fence line is the

replacement of two existing stormwater outfalls which have deteriorated and are contributing to an existing drainage and erosion issue. The drainage improvements would encroach into less than 0.01 acre and be revegetated with native species.

The proposed Project is limited by a draft permit condition prohibiting development in the remaining undeveloped portions of the site that contain environmentally sensitive lands beyond what is required for repairing the drainage outfalls, thus creating an environmental buffer. The Project has adequate setbacks and appropriate landscape screening to avoid significant erosion, visual, or sediment impacts from construction, and Alternative Compliance for brush management shall be provided to prevent the necessity of firebreaks being constructed on reserve property.

Staff Recommendation:

City Council has the authority to affirm, reverse, or modify the decision being appealed. Therefore, staff recommends the City Council deny the appeal, affirm the Planning Commission's decision, and approve Coastal Development Permit No. 2440630, Conditional Use Permit No. 2483264, Site Development Permit No. 2483265, and Planned Development Permit No. 2570884.

City Strategic Plan Goal(s)/Objective(s):

Goal #2: Work in partnership with all communities to achieve safe and livable neighborhoods.

Objective #1: Protect lives, property, and the environment through timely and effective response in all communities

Objective #4: Foster services that improve quality of life.

Fiscal Considerations:

No fiscal impact. All costs associated with the processing of the Project are recovered through a deposit account funded by the applicant. Appeal fees are paid by the appellant.

Charter Section 225 Disclosure of Business Interests:

N/A (No contract associated with the action)

Environmental Impact:

As Lead Agency, the Del Mar Union School District (District) prepared a Mitigated Negative Declaration and subsequent [Focused Final Environmental Impact Report SCH No. 2020029070](#), which included the analysis from the Mitigated Negative Declaration, for the Del Mar Heights School Rebuild Project. On June 30, 2021, the Governing Board of Trustees of the Del Mar Union School District approved Resolution No. 2021-11, certifying the Final Focused Environmental Impact Report, including the Mitigated Negative Declaration (excluding certain Biological Resources and Construction Noise), and adopting Findings of Fact and the Mitigation, Monitoring and Reporting Program (MMRP). On October 21, 2021, the Planning Commission reviewed and considered the Final Focused Environmental Impact Report, including the Mitigated Negative Declaration (excluding certain Biological Resources and Construction Noise) and adopted the Findings and the MMRP by Resolution 5163-PC-1.

Climate Action Plan Implementation:

The City reviewed the Project and collaborated with the school district to demonstrate compliance with the Climate Action Plan through the CAP Consistency Checklist. The Division of the State Architect will be issuing the Project building permits and therefore the City requires compliance with the Greenbook Best Management Practices during construction per the CAP Checklist. However, the Project contains features which further address the CAP compliance as detailed in the CAP Consistency Checklist Step 2 Strategies. Based upon the Project location, green building code measures and that the school is considered a locally serving use, the is consistent with the implementation of the CAP.

The Del Mar Heights Rebuild Project supports Strategy 1 – Energy and Water Efficient Buildings. The demolition of existing buildings and the construction of new buildings with reduction strategies to incorporate site-specific design and innovation. The Project will include plumbing fixtures, appliances, and

roof materials with a solar reflective index (SRI) equal to or greater than the values specified in the non-residential mandatory measures of the California Green Building Standards Code as required by the Division of the State Architect (DSA).

The Del Mar Heights Rebuild Project supports Strategy 2 – Clean & Renewable Energy. Per the non-residential mandatory measures of the California Green Building Standards Code as required by the DSA, Electric Vehicle (EV) charging infrastructure will be provided to the EV charging parking spaces, short and long-term bicycle parking will be integrated onsite, and nine Carpool/Vanpool spaces will be provided which exceeds the spaces required.

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

N/A

Key Stakeholders and Community Outreach Efforts:

Applicant presented the Del Mar Heights Rebuild Project to the Torrey Pines Community Planning Board in June 2020 as an information item and to the Project Review Committee in August 2020. Per the August 2020 minutes: *The Board was advised to seek advice about how to proceed from the City Attorney and are therefore not able to bring this project before the board due to the ongoing litigation.*

Elyse Lowe

Department Director

Jeff Sturak

Deputy Chief Operating Officer